

Trent Howell

From: Trent Howell
Sent: Thursday, November 8, 2018 5:15 PM
To: David Fallon
Cc: 'bbelain77@gmail.com'
Subject: RE: Draft Complaint
Attachments: 2018.11.08 Engagement Letter (Dorothy Whitaker).pdf

Thanks so much, David. I am attaching a proposed engagement letter for Ms. Parker.

Ms. Parker, please let me know if you wish to proceed.

Respectfully,

Trent A. Howell
P.O. Box 2304
Santa Fe, NM 87504
(505) 919-9158
www.trentahowell.com

THIS MESSAGE CONTAINS INFORMATION THAT MAY BE CONFIDENTIAL AND PRIVILEGED. UNLESS YOU ARE THE ADDRESSEE, YOU MAY NOT USE, COPY, OR DISCLOSE TO ANYONE THE MESSAGE OR ITS SUBSTANCE. IF YOU HAVE RECEIVED THIS MESSAGE IN ERROR, PLEASE ADVISE THE SENDER BY REPLY E-MAIL TO trent@trentahowell.com AND DELETE THE MESSAGE. THANK YOU.

From: David Fallon <dfallon@fedattorney.com>
Sent: Thursday, November 8, 2018 3:50 PM
To: Trent Howell <trent@trentahowell.com>
Cc: 'bbelain77@gmail.com' <bbelain77@gmail.com>
Subject: Draft Complaint

Trent –

Thanks again for speaking with us yesterday. I have attached a working draft of the complaint which you can obviously adjust to your own style. Let me know if you need anything else on my end to move forward with the letter of engagement, and filing the Complaint.

Thanks,

Dave

David Fallon
SENIOR ASSOCIATE
dfallon@fedattorney.com



Tully Rinckey PLLC

441 New Karner Road | Albany, NY 12205

(518) 218-7100 Phone | (518) 640-1235 Direct | (518) 218-0496 Fax

www.fedattorney.com

Confidentiality / Privilege Notice: This transmission, including attachments, is intended solely for the use of the designated recipient(s). This transmission may contain information that is confidential and/or privileged or otherwise protected from disclosure. The use or disclosure of the information contained in this transmission for any purpose other than that intended by its transmittal is strictly prohibited. If you are not an intended recipient of this transmission, please immediately destroy all copies received and notify the sender.

From: Trent Howell [<mailto:trent@trentahowell.com>]

Sent: Wednesday, November 07, 2018 12:14 PM

To: Dorothy Whitaker <bbelain77@gmail.com>

Cc: David Fallon <dfallon@fedattorney.com>

Subject: RE: Case from Tulley Rincky

Hi, Dorothy – Thanks. I understand you, David, and I are to have a phone call today at 4:00 p.m. MST. Does that time work for you, and shall I call you at the number you provided?

Trent A. Howell

P.O. Box 2304

Santa Fe, NM 87504

(505) 919-9158

www.trentahowell.com

THIS MESSAGE CONTAINS INFORMATION THAT MAY BE CONFIDENTIAL AND PRIVILEGED. UNLESS YOU ARE THE ADDRESSEE, YOU MAY NOT USE, COPY, OR DISCLOSE TO ANYONE THE MESSAGE OR ITS SUBSTANCE. IF YOU HAVE RECEIVED THIS MESSAGE IN ERROR, PLEASE ADVISE THE SENDER BY REPLY E-MAIL TO trent@trentahowell.com AND DELETE THE MESSAGE. THANK YOU.

From: Dorothy Whitaker <bbelain77@gmail.com>

Sent: Tuesday, November 6, 2018 9:32 PM

To: Trent Howell <trent@trentahowell.com>

Subject: Case from Tulley Rincky

Mr. Howell,

I was given your information through David Fallon attorney with Tulley Rincky Law Firm. I was told that they had sent you information about my case in contemplation of you being able to take on the case.

I would appreciate talking with you regarding this matter at your earliest convenience. Please let me know what is a good time for me to call you.

Respectfully,

Dorothy Whitaker

410-404-8834

Attorney Trent A. Howell

Santa Fe Employment & Business Litigation

trent@trentahowell.com

(505) 919-9158

CONFIDENTIAL

November 8, 2018

Dorothy Whitaker
(410) 404-8834
bbelain77@gmail.com

Re: Engagement of Legal Counsel

Dear Ms. Whitaker:

This “Engagement Letter” is an agreement between Dorothy Whitaker (“Client”), and Attorney Trent A. Howell of Santa Fe, New Mexico (“Attorney”).

1. **Engagement.** Client employs and retains Attorney to represent Client with respect to her civil claims against Department of Health and Human Services (HHS), Indian Health Service (HIS) (collectively, “Employer”), and its agents relating to apparent employment discrimination against Client on the basis of her race (African American), Color (black) and prior protected activity (participation and opposition activity), including but not limited to an incident of termination of her employment/services on or about August 15, 2014 (the “Engagement”). Attorney agrees to represent Client in connection with that matter to the best of his professional abilities. Client understands she is **not** employing or retaining Attorney to counsel or to represent her on any other matters, including but not limited to: the pursuit of any public benefits that may arise from separation of employment from Employer; the pursuit of any first-party insurance that Client may have with respect to employment, termination, or separation from Employer; or the defense of any claim that anyone may assert against Client with respect to the above events or her prior status with Employer.

2. **Personnel.** One attorney will generally be assigned primary responsibility for seeing that your legal needs are met. Your principal attorney is Trent Howell. When appropriate, additional attorneys may from time to time assist, or replace others, in rendering legal services. We will assign attorneys and other personnel on the basis of experience, expertise, nature and scope of the issues, and the time constraints imposed by the matter.

3. **Attorneys’ Fees – Contingent.** Client agrees to pay Attorney’s legal fees on a contingency basis, whereby Attorney will receive a Percentage of any “Recovery” relating to the Engagement, as above defined.

As used herein, the term “Recovery”:

- includes all monetary amounts recovered from any third party under any

circumstance, including but not limited to voluntary settlement before trial, payment following and in satisfaction of any judgment, or payment pursuant to any other court order;

- means gross proceeds that third parties pay either to Client or for the benefit (e.g., to entities other than Client to satisfy taxes, debts or liens) of Client;
- includes amounts paid by third parties for any reason, whether it is or appears to result from communication or action by Client, Attorneys, or others;
- includes, but is not limited to, payments by Employers, their affiliates, or insurers, and disbursements by federal or state entities;
- includes, but is not limited to, all amounts paid as attributable to any injury, harm, damage, award, or expense, regardless whether it may be (by way of illustration but not limitation):
 - wrongful termination;
 - employment discrimination, harassment, or retaliation;
 - labor union interference or prohibited acts;
 - personal injury;
 - past or future medical care;
 - past or future wages;
 - double, treble, or punitive damages;
 - if applicable, “whistleblower” or *qui tam* award, including but not limited to all percentages that federal or state authorities may award to a plaintiff for the government’s recovery pursuant to the Federal False Claims Act, 31 U.S.C. §§ 3729-3733, or the New Mexico Fraud Against Taxpayers Act, NMSA §44-9-1 to §44-9-14;
 - attorney fees incurred in litigation; or
 - costs of litigation.

The Attorney’s “Percentage” of Recovery will depend on the stage of proceedings at which Recovery occurs. Subject to the terms below, the Percentage shall be:

- Thirty-Five Percent (35%) of any Recovery occurring from the time of Engagement through the date on which a Notice of Appeal in the case, if any, has been filed by any party (regardless whether the Notice of Appeal is filed by the Client or other persons); and
- Forty Percent (40%) of any Recovery occurring on any date after a Notice of Appeal has been filed in the case by any party.

In calculating the Attorney’s Percentage of Recovery, “Costs” will be subtracted from the gross Recovery before the Percentage is applied to the residual Recovery. “Costs” to be considered in this calculation will include all costs related to prosecuting the case, regardless whether or not they are considered “taxable” costs under statutes or rules applicable to

Dorothy Whitaker
Engagement Agreement
November 8, 2018
Page 3 of 6

judgments.

If a specific award of attorneys' fees is made by the court, Attorney shall be entitled to the greater of the Percentage set forth above, or the actual attorneys' fees awarded. In submitting Attorneys' fees for court determination, Client agrees that Attorney's usual hourly rate of \$300.00, plus New Mexico gross receipts tax, and \$85.00, plus New Mexico gross receipts tax, for any paralegals will apply.

4. **Costs.** With the exceptions of normal postage, routine copying charges, facsimile and telephone charges, Client is responsible for all costs and expenses of asserting the claim, including but not limited to filing fees and other court costs, deposition and other discovery costs, out of pocket expenses for travel, etc. Automobile travel outside of Santa Fe will be billed at fifty-four and one-half (\$0.545) cents per mile for the year 2018 and at the Internal Revenue Service's "standard mileage rate" for succeeding years if the Engagement continues. For travel by means other than automobile, the actual cost for travel will be billed. Client will reimburse Attorney for any costs and expenses that may have been advanced by Attorney on behalf of Client.

Prior to the taking of any depositions in this matter, Attorney will provide Client with an estimated cost of that deposition, and Client will deposit that amount in Attorney's trust account before such deposition is noticed.

5. **Cooperation.** Client will keep Attorney advised of Client's address, e-mail address, and home and mobile telephone number(s) at all times, give Attorney full cooperation in the preparation and trial of the claim, and keep Attorneys advised of all matters affecting Client's claim. Client agrees to appear for depositions and Court appearances, and to comply with all reasonable requests made by Attorney in connection with the preparation and presentation of Client's claim. Further, in consideration of Attorney's contingency interest in the outcome of the Engagement, Client agrees not to make any public statement regarding the underlying events, evidence, or merits of claims pertaining to the Engagement without Attorney's specific prior consent.

6. **Authority of Attorney-Settlement.** Client authorizes Attorney to act on behalf of Client in all matters relating to the claim, except that Attorney shall not settle or compromise the claim without Client's express approval. Also, Client agrees not to settle or compromise the claim without prior notice to and consultation with Attorney.

7. **Use of facsimile and e-mail.** Unless instructed otherwise, Attorney intends to use facsimile and e-mail (when available) to transmit communications and documents to Client.

Dorothy Whitaker
Engagement Agreement
November 8, 2018
Page 4 of 6

All facsimiles and e-mails will contain a disclaimer stating that the communication is confidential, privileged and intended only for the recipient. Nevertheless, Attorney cannot warrant or guarantee the confidentiality or privilege of any document transmitted by facsimile or e-mail. By signing this agreement, Client agrees to the use of the facsimile and e-mail for the transmission of documents and accepts the limitations of confidentiality.

8. **Communications.** Client's communications with Attorney and any of Attorney's employees concerning Attorney's representation of Client are confidential and protected from disclosure by the attorney-client privilege. Client may lose the privilege if Client discusses these communications with other persons. If Client has questions about what may be disclosed to family, friends and others, Client should contact Attorney.

9. **Privacy Notice.** Attorney, like other professionals who advise on personal financial matters, is required by federal law to inform clients of policies regarding privacy of non-public client information. We are required to give you this information even though we have been and continue to be bound by professional standards of confidentiality that are more stringent than those required by law. We always have protected our clients' rights to privacy, and will continue to do so.

In the course of representing you, we may receive significant non-public personal financial information from you and others. As clients of Attorney Trent A. Howell, you may be assured that all non-public personal financial information we receive from you or on your behalf is held in confidence. The information we receive is not released to anyone outside the firm except as agreed to by you, as may be required to perform the tasks you have requested, or as required under an applicable law.

We may retain records relating to professional services that we provide so that we continue to be able to assist you with your needs and, in some cases, to comply with professional guidelines. In order to guard your personal information, we maintain physical, electronic and procedural safeguards that comply with our professional standards.

If you have questions about the privacy of your financial information, the privacy of communications we have, or the privacy of any other matter relating to our work for you, please feel free to call Attorney.

10. **Termination by Client.** Client may terminate this agreement at any time by written notice to Attorney and by payment or making satisfactory arrangements for payment of reasonable compensation for legal services rendered and reimbursement of any costs or expenses advanced by Attorney through the date of termination.

Dorothy Whitaker
Engagement Agreement
November 8, 2018
Page 5 of 6

11. **Termination by Attorney.** If Attorney determines that he is unable or unwilling for any reason to continue to represent Client, Attorney may terminate this agreement, but shall give Client adequate notice to give Client an opportunity to seek other counsel and to otherwise prevent prejudice to Client's ability to pursue the claim, and Attorney shall be entitled to payment or satisfactory arrangements for payment of reasonable compensation for services rendered and reimbursement of any costs and expenses incurred by Attorney through the date of termination.

12. **Retaining and Charging Liens.** Client hereby agrees, if the matter yields a "Recovery," Attorney has and may assert a Retaining Lien against such proceeds for the amount of his unreimbursed interest under the terms of this Engagement Letter. In addition, Client hereby agrees, if Client maintains litigation or claims arising from or relating to the Engagement *without* Attorney as Client's counsel, Attorney has and may assert in any such litigation or claims a Charging Lien in the amount of his unreimbursed interest under the terms of this Engagement Letter.

13. **No Guarantee of Result.** Although this agreement is entered into by the parties in the hope and expectation of resolving this matter in a manner satisfactory to the Client, Client understands that it is impossible to predict the outcome of any action and acknowledges that Attorney has made no guarantee, promise or representation as to the result.

14. **Notice to Client.** Pursuant to Rule 16-104(C) NMRA of the New Mexico Rules of Professional Conduct, I am required to notify you that I no longer maintain professional liability malpractice insurance of at least one-hundred thousand dollars (\$100,000) per occurrence and three-hundred thousand dollars (\$300,000) in the aggregate.



Trent A. Howell

I acknowledge receipt of the notice required by Rule 16-104(C) NMRA of the New Mexico Rules of Professional Conduct that Attorney Trent A. Howell does not maintain professional liability malpractice insurance of at least one-hundred thousand dollars (\$100,000) per occurrence and three-hundred thousand dollars (\$300,000) in the aggregate.

Dorothy Whitaker
Engagement Agreement
November 8, 2018
Page 6 of 6

I HAVE READ, UNDERSTOOD, AND AGREE TO THE TERMS OF ENGAGEMENT OF LEGAL COUNSEL AS SET FORTH ABOVE. I HAVE RECEIVED A COPY OF THE AGREEMENT.

Dorothy Whitaker

Date